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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Surecom Technology Corp.

Serial No. 76/055,965

Bruce H. Troxell of Troxell Law Office PLLC for Surecom Technology Corp.

James Arthur Bruno, Jr., Trademark Examining Attorney, Law Office 103 (Michael Hamilton, Managing Attorney).

Before Hohein, Walters and Rogers, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Surecom Technology Corp. has filed an application to register the mark "SURECOM," in the stylized format shown below,

SURECOM

for "microcomputers, namely, main frames, CPU's (central processing units), hard disk drivers, magnetic disk drivers, optical disk drivers, hubs, electrical connectors, audio receivers, telephone receivers, and blank magnetic disks."¹

¹ Ser. No. 76/055,965, filed on May 19, 2000, which alleges a date of first use anywhere and first use in commerce of July 16, 1999.

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used in connection with its goods, so resembles the mark "SURE-COMM," which is registered for "radio transceivers,"² as to be likely to cause confusion, mistake or deception.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

Our determination under Section 2(d) is based on an analysis of all of the facts in evidence which are relevant to the factors bearing on the issue of whether there is a likelihood of confusion. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 568 (CCPA 1973). However, as indicated in Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976), in any likelihood of confusion analysis, two key considerations are the similarity of the goods and the similarity of the marks.³

Turning first to consideration of the respective goods, applicant argues that the Examining Attorney "would have the Board find that all electronic devices are, per se, related goods." Applicant insists, however, that the evidence made of record by the Examining Attorney, consisting of "website excerpts

² Reg. No. 1,828,812, issued on March 29, 1994, which sets forth a date of first use anywhere and first use in commerce of April 1993; combined affidavit §§8 and 15.

³ The court, in particular, pointed out that: "The fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks."

from both parties' websites" and "evidence that other parties manufacture and sell both computers and computer products and radio transceivers" (underlining by applicant), fails to establish that, as to applicant's and registrant's particular goods, "each product line is necessarily related to the other." Specifically, applicant contends that there is no evidence that registrant's mark for its radio transceivers is used "with any other products, including product lines that may be similar to those manufactured by the applicant." Applicant also points out that "[t]he goods used with the applicant's mark are computer related goods," which "are advertised and sold to sophisticated purchasers, who are easily able to distinguish a computer product line from radio transceivers or other unrelated products." Applicant urges, in light of such differences, that "[i]t is therefore not likely that the applicant's mark will cause confusion with the registrant's mark."

The Examining Attorney, on the other hand, correctly observes that goods need not be identical or even competitive in nature in order to support a finding of likelihood of confusion. It is sufficient, instead, that the goods are related in some manner and/or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under situations that would give rise, because of the marks employed in connection therewith, to the mistaken belief that they originate from or are in some way associated with the same entity or provider. See, e.g., Monsanto Co. v. Enviro-Chem

Corp., 199 USPQ 590, 595-96 (TTAB 1978) and In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978).

Furthermore, it is well established, as the Examining Attorney also properly points out in his brief, that the issue of likelihood of confusion must be determined on the basis of the goods as they are set forth in the involved application and the cited registration. See, e.g., Canadian Imperial Bank of Commerce, N.A. v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813, 1815-16 (Fed. Cir. 1987); CBS Inc. v. Morrow, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983); Squirtco v. Tomy Corp., 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983); and Paula Payne Products Co. v. Johnson Publishing Co., Inc., 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973). Thus, where the goods in the application at issue and in the cited registration are broadly described as to their nature and type, it is presumed that in scope the application and registration encompass not only all goods of the nature and type described therein, but that the identified goods move in all channels of trade which would be normal therefor and that they would be purchased by all potential buyers thereof. See, e.g., In re Elbaum, 211 USPQ 639, 640 (TTAB 1981).

In view of the above, the Examining Attorney asserts that "[t]here is ample evidence in the record to support a determination that the goods identified by the applicant's mark are sufficiently related to the goods identified by the registrant's mark so as to create a likelihood of confusion as to their source in the marketplace" and notes that:

In the Final Office Action, the examining attorney submitted printouts of federal registrations of entities selling and/or manufacturing both "radio transceivers" and computer-related goods such as those represented by applicant's mark. In addition, the examining attorney submitted excerpts of articles from a search in a NEXIS database evidencing the use of the term "radio transceiver" with "receiver" and/or computer-related goods.

The Examining Attorney, requesting that the Board take judicial notice that The Random House Dictionary of the English Language (3rd ed. 1992) defines "receiver" as "[a] device, such as a part of a radio, television set, or telephone, that receives incoming radio signals and converts them to perceptible forms, such as sound or light" and lists "transceiver" as "[a] transmitter and a receiver housed together in a single unit and having some circuits in common, often for portable or mobile use,"⁴ also contends that:

Given the plain definitions of these terms, it is not unreasonable to conclude that audio receivers are often components of transceivers themselves. In this sense, no great leap of faith is required to determine that these types of electronic goods are likely to be found together in commerce, either marketed together or sold together as part of a particular electronic device.

With respect to applicant's argument concerning the asserted sophistication of the purchasers of the goods at issue, the Examining Attorney maintains that the excerpts which he has

⁴ Such request is approved inasmuch as it is settled that the Board may properly take judicial notice of dictionary definitions. See, e.g., *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953); *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); and *Marcal Paper Mills, Inc. v. American Can Co.*, 212 USPQ 852, 860 n. 7 (TTAB 1981).

made of record from the websites of registrant and applicant show that registrant "is a technology company that designs, produces, and integrates communications systems and components, including wireless communications systems, for defense, commercial, and international electronics industries" and that applicant "is a technology company that provides computer networking solutions in the electronics industry, including wireless networking products." The Examining Attorney concludes, in view thereof, that "[w]hile there may be certain differences in the precise levels of expertise brought by customers to the specific areas of use associated with the various products of the applicant and the registrant, the fact that both design and sell wireless computer products supports a finding that the levels of sophistication associated with the goods of each are comparable." Moreover, and in any event, the Examining Attorney insists that "the fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion."

We agree with the Examining Attorney that, as identified in the application and cited registration, the goods at issue are closely related in that, contrary to applicant's assertions, they would frequently be used as part of wireless communication networks and computer networking applications. As alluded to previously, the Examining Attorney in support of his contention has made of record, among other things, copies of four use-based third-party registrations of marks which are registered

for, *inter alia*, both "radio transceivers," on the one hand, and "computers," "personal computers; ... radio base station transmitters and receivers; ... [and] telephones," "computers ... [and] wireless radio receivers" (sold as part of an emergency communication system) or "electrical connectors ... for coupling ... key telephone systems ... or computers to cellular communications systems," on the other. While such registrations are admittedly not evidence that the different marks shown therein are in use or that the public is familiar with them, they nevertheless have some probative value to the extent that they serve to suggest that the goods listed therein are of the kinds which may emanate from a single source. See, e.g., In re Albert Trostel & Sons Co., 29 USPQ2d 1783, 1785-86 (TTAB 1993) and In re Mucky Duck Mustard Co. Inc., 6 USPQ2d 1467, 1470 (TTAB 1988) at n. 6.

In addition, the Examining Attorney has made of record excerpts from a search of the "NEXIS" database which refer to various uses of "radio transceivers" in conjunction with "computers" or "microcomputers." Examples thereof include the following (emphasis added):

"The kits work by plugging lights and appliances into ... outlet modules, installing the software and then connecting a **radio transceiver** into the **computer's** parallel port." -- Milwaukee Journal Sentinel, November 30, 1999;

"A small **radio transceiver** that allows **computers** to talk to each other even if they are not connected by cables or phone lines." -- Tribune (San Luis Obispo, CA), September 30, 1999;

"[A] user spends \$149 for a wireless modem that enables their **computer** to communicate with the nearest antenna[s], which are attached to the **radio transceivers**." -- Patriot Ledger (Quincy, MA), October 21, 1998;

"Wireless networks use a high-frequency radio signal to connect **computers** equipped with tiny two-way **radios**, or **transceivers**." -- N.Y. Times, June 30, 1998; and

"[M]otorists will have a small disk on the inside of the car's windshield containing a **microcomputer**, a low-power **radio transceiver**" -- Boston Globe, May 18, 1991.

Furthermore, as also mentioned earlier, the Examining Attorney has made of record excerpts from both applicant's and registrant's websites which demonstrate, in each case, that applicant and registrant market products designed for use in computer communications networks and networking functions. Taken together, the evidence of record is sufficient to establish that, contrary to applicant's contentions, registrant's "radio transceivers" are indeed used "with ... other products, including product lines ... similar to those manufactured by the applicant." Although, due to the obvious technical nature of the respective goods and their uses, purchasers thereof and prospective customers therefor would typically be knowledgeable and discriminating consumers, the sophistication and care exercised by such buyers in their selection of applicant's and registrant's products "does not necessarily preclude their mistaking one trademark for another" or demonstrate that they otherwise are entirely immune from confusion as to source or sponsorship. *Wincharger Corp. v. Rinco, Inc.*, 297 F.2d 261, 132

USPQ 289, 292 (CCPA 1962). See also In re Decombe, 9 USPQ2d 1812, 1814-15 (TTAB 1988); and In re Pellerin Milnor Corp., 221 USPQ 558, 560 (TTAB 1983). Accordingly, we conclude that applicant's microcomputers, CPU's, disk drivers, hubs, electrical connectors, audio and telephone receivers, and blank magnetic disks are so closely related to registrant's radio transceivers that, if marketed under the same or similar marks, confusion as to the origin or affiliation thereof would be likely to occur.

Turning, therefore, to consideration of the respective marks, applicant urges that despite the "similarity of sound between the two marks," its mark "is a stylized logo that is distinctly different from the registrant's mark" in appearance. Specifically, applicant asserts that:

The applicant's mark comprises the word "SURECOM" with a stylized "S," a stylized "E," a stylized "C," and a stylized "M." On the stylized "E" of the mark, the center leg of the "E" is replaced with a triangle. These stylized letters add an overall artistic design element to the entirety of the applicant's mark. Although the registrant's mark may be presented in a stylized form in commerce, it is visually distinct due to the addition of a hyphen between the words "sure" and "comm" and the addition of an extra "m" to "com."

Applicant insists that its mark's "distinctive stylization and its difference in spelling and visual appearance produce a commercial impression that is not likely to result in confusion with the registered mark."

We concur with the Examining Attorney, however, that confusion is likely from contemporaneous use of the respective marks in connection with the goods at issue. When considered in

their entireties, applicant's stylized "SURECOM" mark and registrant's "SURE-COMM" mark not only "are essentially phonetic equivalents," as the Examining Attorney accurately observes in his brief, but such marks are substantially identical in appearance, connotation and commercial impression. Visually, as applicant has acknowledged, registrant's mark "may be presented in a stylized form" and, as correctly noted by the Examining Attorney in his brief, such form could reasonably include the same stylized format as that in which applicant's mark is depicted. See, e.g., *Phillips Petroleum Co. v. C. J. Webb, Inc.* 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971) [a mark registered in typed format is not limited to the depiction thereof in any special form]; and *INB National Bank v. Metrohost Inc.*, 22 USPQ2d 1585, 1588 (TTAB 1992) ["[a]s the *Phillips Petroleum* case makes clear, ... the Board must consider all reasonable manners in which ... [the mark] could be depicted" when the mark is displayed in a typed format]. Moreover, and aside from the suggestion of a hyphen which is imparted to applicant's mark by the triangle which serves as the middle prong of the letter "E" therein, the Examining Attorney also persuasively points out, with respect to registrant's mark, that "[a]s compared to applicant's SURECOM mark, the additional letter 'M' and the hyphen between the terms 'SURE' and 'COMM' do not create a different connotation or commercial impression."

Accordingly, we conclude that purchasers and potential customers, who are familiar or acquainted with registrant's "SURE-COMM" mark for its "radio transceivers," would be likely to

believe, upon encountering applicant's substantially identical "SURECOM" mark for its "microcomputers, namely, main frames, CPU's (central processing units), hard disk drivers, magnetic disk drivers, optical disk drivers, hubs, electrical connectors, audio receivers, telephone receivers, and blank magnetic disks," that such closely related goods emanate from, or are sponsored by or associated with, the same source.

Decision: The refusal under Section 2(d) is affirmed.